THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.8392 of 2006

Dated: 03-07-2006

Between:

Raj Kumar Kothari and another.

..... PETITIONERS

AND

The Special Officer and Competent Authority,
Visakhapatnam, and four others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.8392 of 2006

ORDER:

Bank of India, SSI Branch, Visakhapatnam, conducted a public auction for sale of land admeasuring Ac.1-09 cents in survey No.25 situated at Gopalapatnam, Visakhapatnam, under the provisions of Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, for brevity) on 22-02-2005. In the said auction, second petitioner-company became the highest bidder and the sale was knocked down in its favour. Accordingly fourth respondent-Bank issued a sale certificate on
21-03-2005 under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. The second petitioner-company, having regard to Section 17 (2) (xii) of the Indian Registration Act, 1908 (the Registration Act, for brevity), presented said sale certificate before the Sub-Registrar, Visakhapatnam, fifth respondent herein, for registration. However, registration was refused on the ground that certificate of sale is not a registrable document. At that stage, second petitioner-company represented by first petitioner filed the present writ petition seeking a direction to fifth respondent to register the certificate of sale dated
21-03-2005.

At the preliminary stage itself the learned Assistant Government Pleader for Revenue (General) was directed to get instructions in the matter. However, as the learned Government Pleader sought time for filing counter, on 27-04-2006 this Court passed orders directing fifth respondent to receive the certificate of sale and take necessary action in accordance with law. It appears that thereafter fourth respondent-Bank executed a regular sale deed in favour of second petitioner-company on 05-06-2006 and the same was submitted to fifth respondent for registration, in vain. In the counter-affidavit filed by fifth respondent, it is stated that as the land covered by the document is governed by the provisions of the Urban Land (Ceiling and Registration) Act, 1976, as and when declaration from ULC authority is produced, the sale deed will be processed. In that view of the matter, it is alleged by fifth respondent that the prayer in the writ petition has become infructuous.

It is no doubt true that the writ petition is filed seeking a direction to fifth respondent to register the certificate of sale dated 21-03-2005 issued by fourth respondent in favour of second petitioner-company. Having regard to the orders passed by this Court on

27-04-2006, the petitioners submitted that since regular sale deed dated 05-06-2006 was executed by fourth respondent, there cannot be any objection for registering the same. Further at the instance of fourth respondent, the borrower, whose property was auctioned, approached the Special Officer and Competent Authority, ULC, Visakhapatnam, to know the status of the land in survey No.25/2, which was sought to be sold in public auction. In response thereto, the Special Officer, ULC, Visakhapatnam, has addressed a letter dated 21-02-2005 to the Branch Manager, Bank of India, Visakhapatnam, to the effect that the land in survey No.25, part of Gopalapatnam, is declared as non-surplus land by proceedings dated 08-02-2001. Therefore, as rightly pointed out by the learned Government Pleader, fifth respondent should take this into consideration and proceed further in accordance with the provisions of the Registration Act in registering the sale deed dated 05-06-2006 submitted by the petitioners.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

3rd July, 2006
ghn